



statement that venue is proper because "plaintiffs suffered injurious exposures in Clinton County, Missouri ...," there are no factual allegations in the Petition that would indicate that Ms. Lasher has any connection to Clinton County, much less that she claims to have been first injured in Clinton County. Therefore, from the face of the Petition, venue in Clinton County appears improper for Plaintiff Janet Lasher.

Under Missouri Rule of Civil Procedure 51.045(a), "an action brought in a court where venue is improper shall be transferred to a court where venue is proper if a motion for such transfer is timely filed." This motion was timely filed as it was filed within sixty days of service on the parties seeking transfer of venue. *Id.* Accordingly, Ms. Lasher's claims must be transferred to the court where venue is proper. *See also* Mo. Rev. Stat. § 476.410 (case filed in wrong venue shall be transferred to any court in which it could have been brought).

**B. Neither Joinder Nor Consolidation Can Be Used to Overcome Improper Venue.**

Attempting to join Ms. Lasher's cause of action with the cause of action of Plaintiff William Kemper does not provide venue where none existed before. *State ex rel. Turnbough v. Gaertner*, 589 S.W.2d 290, 292 (Mo. banc 1979) (joining separate causes of action does not create venue where it would otherwise not have existed because venue cannot be "established or limited on the basis of the Rules of Civil Procedure"). Likewise, improper venue cannot be cured through consolidation. Under Missouri Rule of Civil Procedure 66.01(b), "civil actions involving a common question of law or fact [that] are pending before the court" may be consolidated. (emphasis added). Here, Ms. Lasher's cause of action will not be "pending before" this Court once it has been transferred to the proper venue and therefore cannot be consolidated

with another action in Clinton County.<sup>1</sup>

Because defendants have filed a timely motion to transfer venue, the Court's only proper action as to Ms. Lasher's claims is to transfer Ms. Lasher's cause of action "to a court where venue is proper." Mo. R. Civ. P. 51.045; *see also State ex rel. Kansas City Southern Ry. Co. v. Nixon*, 282 S.W.3d 363, 365 (Mo. banc 2009) (trial courts have "ministerial duty to transfer cases to correct venues"). At this time, based on the Petition, Ms. Lasher has not demonstrated where venue is proper since Ms. Lasher alleges only that she lives in Daviess County (Petition ¶ 3) and that the land application at issue occurred in Andrew, Buchanan, DeKalb, and Clinton Counties (Petition ¶ 19). Thus, she does not provide sufficient information to establish proper venue. Under Rule 51.045(b), in the event that proper venue cannot be determined based on the Petition, the Court "may allow discovery on the issue of venue" before ruling on a motion to transfer venue.

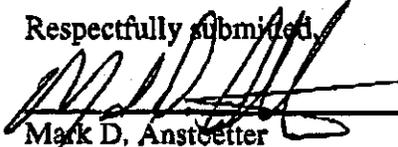
### III. CONCLUSION

For the foregoing reasons, Defendants Burns & McDonnell Engineering Company, Inc. and Elementis LTP L.P. respectfully request that the Court issue an order (1) transferring the cause of action of Plaintiff Janet Lasher to a court where venue is determined to be proper and (2) directing Plaintiff William Kemper to amend his pleadings to conform to this transfer by removing references to Plaintiff Janet Lasher.

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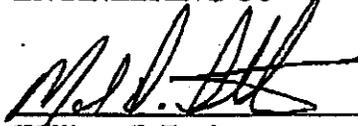
<sup>1</sup> Defendants dispute that Mr. Kemper's and Ms. Lasher's causes of action involve a common question of law or fact, but this issue need not be reached because Ms. Lasher's cause of action is not properly pending before this Court.

Respectfully submitted,



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